

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

DAVE CARLTON, *et al.*,

Plaintiffs,

v.

FRED CANNON, *et al.*,

Defendants.

No.: 4:15-cv-00012

CLASS ACTION

Chief Judge Lee H. Rosenthal

REPLY IN FURTHER SUPPORT OF MOTIONS FOR: (1) FINAL APPROVAL OF CLASS ACTION SETTLEMENT, PLAN OF ALLOCATION, AND TO CERTIFY A CLASS FOR SETTLEMENT PURPOSES; AND (2) AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND AWARD TO LEAD PLAINTIFFS

Lead Plaintiffs Dave Carlton and Sharon Kegerreis (“Lead Plaintiffs”) respectfully submit this reply in further support of Lead Plaintiffs’ Motion for Final Approval of Class Action Settlement, Plan of Allocation, and to Certify a Class For Settlement Purposes and Lead Plaintiffs’ Motion for Attorneys’ Fee and Reimbursement of Expenses and Compensatory Award to Lead Plaintiffs filed on April 26, 2017. (Dkt. Nos. 149, 151).

I. Preliminary Statement

Over 22,000 copies of the notice have been mailed to potential class members—which include sophisticated institutional and professional investors. *See* Declaration of Josephine Bravata Concerning the Mailing of Notice of Pendency and Proposed Settlement of Class Action and Proof of Claim and Release Form (“Bravata Decl.”) at ¶8 (Dkt. No. 153-2). The Summary Notice was published in *Investor’s Business Daily* and on-line through *GlobeNewswire. Id.*, at ¶10.

Exclusions: In response to this extensive notice program, only three requests for exclusion have been received. *See* Supplemental Declaration of Josephine Bravata Concerning Mailing of Notice and Claim Form, Requests for Exclusion Received and Objections Submitted (“Supplemental Bravata Decl.”) at ¶4. The deadline to seek exclusion was May 9, 2017. *Id.*

The first exclusion, filed as Exhibit D to the Bravata Decl., was from Stephen J. McGovern who had purchased, and never sold, 400 shares of KiOR. In his request for exclusion, Mr. McGovern mentioned that he previously was a consultant for KiOR and did not believe the settlement was appropriate and therefore wanted to retain his rights. He did not provide further explanation. (Dkt. No.153-2 at 30). Attached as Exhibit A to the Supplemental Bravata Decl., is Dane Larson’s request for exclusion, who purchased 275 shares and sold all 275 shares of KiOR during the Class Period. Also included in Exhibit A to the Supplemental Bravata Decl., is a

request for exclusion filed by Franciscus Antonius Maria Shrijvers and Anna Maria Shrijvers – van den Hoogenhof who jointly purchased 60,431 shares of KiOR and sold 22,500 shares during the Class Period, leaving them with 37,931 remaining shares. These two exclusion requests did not give any apparent reason for their desire to opt-out and do not appear to oppose the Settlement.

Objections: There have been no objections to the Settlement, Lead Counsel’s motion for attorneys’ fees and expenses and application for an award to Lead Plaintiffs received. Supplemental Bravata Decl., ¶5. The deadline to object to the Settlement was May 9, 2017. *Id.*

II. The Reaction of the Class Overwhelmingly Supports Final Approval of the Settlement and Requested Fees and Expenses

In summary, 22,786 notices were mailed to potential Class Members. Supplemental Bravata Decl. at ¶3. Only three requests for exclusion were received and there have been no objections. *Id.* at ¶¶3-5. The exclusion requests represent 61,106 shares of KiOR stock purchased during the Class Period, a minuscule percentage, only 0.05%, of the 110,445,142 shares outstanding at the end of the Class Period.

Given these facts, the reaction of the Settlement Class supports final approval and the requested fees and expenses. *See Maher v. Zapata Corp.*, 714 F.2d 436, 456 (5th Cir. 1983) (holding that the “minimal nature of shareholder objection” favors approval of settlement); *Quintanilla v. A & R Demolition Inc.*, 2008 WL 9410399, at *5 (S.D. Tex. May 7, 2008) (“If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.”) (quoting *Wal-Mart Stores, Inc. v. VISA U.S.A., Inc.*, 396 F.3d 96, 118 (2d Cir.2005); *Petrovic v. AMOCO Oil Co.*, 200 F.3d 1140, 1152 (8th Cir. 1999) (approving settlement where “fewer than 4 percent of the class members objected to the settlement”);

Stoetznier v. U.S. Steel Corp., 897 F.2d 115, 118-19 (3d Cir. 1990) (Twenty-nine objections out of 281 class members “strongly favors settlement”).

III. CONCLUSION

For all of the foregoing reasons, Lead Plaintiffs respectfully request that the Court give final approval to the Settlement and grant the motion for award of attorneys’ fees and reimbursement of expenses and awards to Lead Plaintiffs.

Dated: May 23, 2017

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 23rd of May, 2017, a true and correct copy of the foregoing document was served by CM/ECF to the parties registered to the Court's CM/ECF system.

/s/ Phillip Kim
Phillip Kim